

Rights & Responsibilities:
**The Rights of Requesters and the Responsibilities of the Department of
Taxation under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), located at § 2.2-3700 *et. seq.* of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees. Because the tax records of individuals and businesses are protected by Va. Code § 58.1-3 and excluded from FOIA access, most of the public records held by the Department of Taxation cannot be provided, even pursuant to an FOIA request. (See “Commonly Used Exemptions” below for more detail.)

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

The policy of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Your FOIA Rights

- You have the right to request to inspect **or** receive copies of public records, or both.
- You have the right to request that any charges for the costs of searching for and producing the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA.

Making a Request for records from the Department of Taxation

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.
 - It may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you

are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.

- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general questions about the work of Department of Taxation, nor does it require the Department of Taxation to create a record that does not exist. If there are no records meeting the request, a statement to that effect by the Department of Taxation is a sufficient response.
- You may choose to receive electronic records in any format used by the Department of Taxation in the regular course of business.
 - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making an FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

To request records from the Department of Taxation, you may direct your request to:

**Public Relations Office
Virginia Department of Taxation
Post Office Box 2475
Richmond, Virginia 23218
Telephone: (804) 786-3507
Fax: (804) 786-3536
Email: joel.davison@tax.virginia.gov**

You may also contact this person with questions you have concerning requesting records from the Department of Taxation. In addition, the

Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by e-mail at foiacouncil@leg.state.va.us, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

The Department of Taxation's Responsibilities in Responding to Your Request

- The Department of Taxation must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records from the Department of Taxation is irrelevant, and we cannot ask you why you want the records before we respond to your request. FOIA does, however, allow the Department of Taxation to ask you to provide your name and legal address.
- FOIA requires that Department of Taxation make one of the following responses to your request within the five-day time period:
 - 1) We provide you with the records that you have requested in their entirety.
 - 2) We withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.
 - 3) We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
 - 4) If it is impossible practically for Department of Taxation to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to

respond to your request, giving us a total of 12 working days to respond to your request.

- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.
- The Department of Taxation may respond to your request by directing you to its Internet Web site, <http://www.tax.virginia.gov/> where the following records are available:
 - Tax Code of Virginia (Title 58.1 and other tax-related provisions of the Virginia Code)
 - Virginia Administrative Code (Regulations)
 - Legislative Summaries
 - Rulings of the Tax Commissioner
 - Tax Bulletins
 - Attorney General Opinions relating to tax issues
 - Virginia Tax Facts
 - Forms
 - Virginia Taxpayer Bill of Rights
 - Annual Reports (1987 – Current)
 - Assessment Sales Ratio Studies (1990 – Current)
 - Virginia Taxable Sales Reports
 - Personal Property Tax Relief Act Compliance Program Guidelines
 - Local Tax Rates (1999 – Current)
 - Other Topics of General Interest

Costs

- You may have to pay for the records that you request from the Department of Taxation. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, the Department of Taxation may require payment of the past-due bill before it will respond to your new FOIA request.

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Department of Taxation commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Governor's confidential working papers and correspondence (§ 2.2-3705.1 (6))
- Federal tax returns and return information (Internal Revenue Code § 6103(a)) and Va. Code § 58.1-3

- State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § 58.1-3 (which include any information with respect to the transactions, property, including personal property, income or business of any person, firm or corporation and any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return) (§ 2.2-3705.1 (2))

Code of Virginia § 58.1-3 imposes stiff penalties on any person who discloses confidential taxpayer information. However, there is nothing in § 58.1-3 that prohibits the disclosure of confidential taxpayer information to the subject taxpayer. In other words, you may request and receive copies of your own tax returns. You may not be provided with copies of another taxpayer's tax information unless you furnish a written power of attorney granted to you and signed by the taxpayer. The Department of Taxation form PAR 101 is used for that purpose.

Also pursuant to Va. Code § 58.1-3, the Department of Taxation cannot furnish aggregated tax information, by category, when the number of taxpayers within the category is minimal enough to potentially allow identification of the taxpayers.